

**Polis Wallcovering Inc. and Paperhangers Local  
Union 587 of the Brotherhood of Painters and  
Allied Trades, AFL-CIO. Case 4-CA-21026**

March 15, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

Upon an amended charge filed by Paperhangers Local Union 587 of the Brotherhood of Painters and Allied Trades, AFL-CIO (the Union) on October 29, 1992,<sup>1</sup> the General Counsel of the National Labor Relations Board issued a complaint against Polis Wallcovering Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the amended charge and complaint, the Respondent failed to file an answer.

On February 8, 1993, the General Counsel filed a Motion for Summary Judgment. On February 9, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 25, 1992, notified the Respondent that its answer was overdue and that unless an answer was received by December 2, 1992, a Motion for Summary Judgment would be filed. The Respondent failed to file any answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Pennsylvania corporation, with a principal place of business in Philadelphia, Pennsylvania, has been engaged in the installation of wall coverings. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations purchased and received goods valued in excess of \$50,000 at its Philadelphia, Pennsylvania facility directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Respondent authorized the Master Paperhangers Guild of Philadelphia (the Guild) to negotiate its collective-bargaining agreements with the Union. The most recent collective-bargaining agreement between the Guild and the Union (the Agreement), is effective from May 1, 1991, to April 30, 1994. The unit of Respondent's employees (the unit) covered by this collective-bargaining agreement is described in article 1 of the Agreement and constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. The recognition has been pursuant to successive collective-bargaining agreements, the most recent of which is referred to above and is effective from May 1, 1991, to April 30, 1994.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since on or about March 3, 1992, the Respondent has failed to continue in effect all terms and conditions of the Agreement by refusing to comply with that portion of article 10 of the Agreement which provides, in pertinent part, that "all work in the shop shall be divided equally among the steady employees capable of performing the work."

The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

On or about March 17, 1992, the Union filed a grievance under article 29 of the Agreement protesting Respondent's failure to comply with article 10 of the Agreement.

<sup>1</sup> The original charge was filed by the Union on September 2, 1992.

In or about late April or early May 1992, the Respondent and the Union resolved the grievance referred to above by reaching an oral agreement which required the Respondent to comply with article 10 of the Agreement by assigning work to steady employees on a rotational basis.

Since in or about late April or early May 1992, the Respondent has failed to comply with the oral agreement by refusing to assign work to its steady employees on a rotational basis.

The Respondent engaged in the conduct described above without the Union's consent and without giving the Union prior notice and an opportunity to bargain.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to comply with article 10 of the Agreement and its subsequent oral agreement with the Union to assign work to its steady employees on a rotational basis, we shall order the Respondent to comply therewith, and to make whole the unit employees for any losses attributable to its failure to do so, as set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Polis Wallcovering Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing to comply with that portion of article 10 of the Agreement which provides, in pertinent part, that "all work in the shop shall be divided equally among the steady employees capable of performing the work."

(b) Failing to comply with its oral agreement with the Union made in resolution of a grievance by refusing to assign work to its steady employees on a rotational basis.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with that portion of article 10 of the Agreement which provides, in pertinent part, that "all work in the shop shall be divided equally among the steady employees capable of performing the work."

(b) Comply with its oral agreement with the Union made in resolution of a grievance by assigning work to its steady employees on a rotational basis.

(c) Make whole the unit employees for any losses attributable to its failure to comply with article 10 of the Agreement and its subsequent oral agreement with the Union, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to continue in effect all terms and conditions of the 1991-1994 Agreement with the Paperhangers Local Union 587 of the Brotherhood of Painters and Allied Trades, AFL-CIO, by refusing to

comply with the portion of article 10 of the Agreement which provides, in pertinent part, that "all work in the shop shall be divided equally among the steady employees capable of performing the work."

WE WILL NOT fail to comply with our oral agreement with the Union in resolution of a grievance by refusing to assign work to our steady employees on a rotational basis.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the act.

WE WILL comply with the portion of article 10 of the 1991-1994 Agreement which provides, in pertinent

part, that "all work in the shop shall be divided equally among the steady employees capable of performing the work."

WE WILL comply with our oral agreement with the Union in resolution of a grievance by assigning work to our steady employees on a rotational basis.

WE WILL make whole our unit employees for any losses attributable to our failure to comply with article 10 of the Agreement and our oral agreement with the Union.

POLIS WALLCOVERING INC.